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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re C.E., a Person Coming Under the Juvenile Court Law.	B216699 (Los Angeles County Super. Ct. No. NJ43830)
THE PEOPLE, Plaintiff and Respondent, v. C.E., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Cynthia Loo, Judge. Remanded with directions.

Jeralyn Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters and Robert S. Henry, Deputy Attorneys General, for Plaintiff and Respondent.

The minor, C.E., appeals from the juvenile court's order declaring him a ward of the court and ordering him home on probation after finding he committed grand theft. He contends the court erred by admitting improper opinion evidence. The People argue the juvenile court erred in failing to determine whether the grand theft was a felony or a misdemeanor. We affirm the jurisdiction order, but remand for the juvenile court to conduct a new disposition hearing.[1]

FACTUAL AND PROCEDURAL BACKGROUND

A Welfare and Institutions Code section 602[2] petition filed on August 18, 2008 alleged the minor, then 15 years old, committed grand theft of personal property, a laptop computer, valued in excess of $400, from Romina Payang.

1. *Jurisdiction Hearing*

a. Summary of the people's evidence

According to the evidence at the jurisdiction hearing, after teaching her high school class on June 13, 1008, Romina Payang realized her laptop computer was missing. She had placed the computer on a desktop in the classroom, where she had seen it about 15 minutes earlier. Payang did not see who took her computer, which was valued at approximately $1000. There were 30 students in her class that day, among them, the minor, who was newly enrolled in the high school. The minor had been sitting next to Payang's computer, and he was the first student to leave when class ended. He left through the door normally used by students to enter the classroom.

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[1] The parties agree there is a clerical error in the disposition order. It contains a maximum term of confinement, which the court did not orally pronounce and was not required to set because the minor was ordered home on probation. (Welf. & Inst. Code, § 726, subd. (c); *In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.) However, there is no need for us to strike this maximum confinement term; it can be corrected on remand.

[2] Statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

M.R. was a student in Payang's class and knew the minor casually. M.R. testified that before the day of the theft, the minor had offered him money not to say anything if the minor took Payang's laptop computer. M.R. replied he did not care and told the minor to keep his money. On June 13, 2008, the minor again offered M.R. money, this time to store the computer in his locker. M.R. falsely stated he did not have a locker.[3] M.R. testified he never saw the minor with Payang's computer; and he did not see anyone take it from the classroom.

Hidalia Nunez was a Los Angeles Police Department School Officer in June 2008. At the hearing, Nunez testified to having interviewed M.R. about the theft of the laptop computer on June 17, 2008. Her testimony corroborated M.R.'s testimony as to his conversations with the minor. Nunez also testified M.R. told her that he saw the minor take the computer, put it inside his backpack, and walk out of the classroom.

Officer Nunez testified she then interviewed the minor. Prior to questioning him, Nunez advised him of his right to remain silent, to the presence of an attorney, and, if indigent, to appointed counsel (*Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694]), which the minor waived. At the beginning of the interview, the minor denied knowing about the theft of the laptop computer. However, as the interview progressed, the minor said, "Give me a day, and I can get it back for you." When Nunez questioned him further, the minor repeatedly said, "I don't know."

b. Summary of the defense evidence

Lawrence Garrett, a defense investigator, testified he had interviewed M.R. after the minor's arrest. M.R. told Garrett he did not recall having any conversations with the minor about taking the laptop computer and storing it in M.R.'s locker for money. M.R. also said he did not see the minor take the computer. On cross-examination, the

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[3] Following the minor's arrest, M.R. wrote a statement for police, which the minor read into the record at the hearing: The minor "'asked me if I had a locker after he took the lap top so he could put it in my locker, but I said no, and before that he asked me if he took the lap top and I didn't say anything he would give me money.'" ¶ I said "'he could keep the feria [money], I don't care.'"

prosecutor asked Garrett, "Now, did [M.R.] in fact tell you that he thought the minor sitting there stole the computer?" Garrett answered, "Yes, he did." The prosecutor then asked, "And did he tell you that he thought the minor stole the computer on his own?" Garrett answered, "Yes, he did." The defense attorney made a hearsay objection, which the juvenile court overruled.

The minor testified in his own defense he did not know M.R. by name and spoke to him on only one occasion, on the morning of the theft when M.R. inquired if the minor wanted to join a particular gang. The minor declined. The next time the minor saw M.R. was on June 17, 2008, when M.R. identified the minor to Officer Nunez as the person who stole the laptop computer. The minor denied talking to M.R. about taking the computer; he knew nothing about the theft until Monday June 16, 2008. The minor also testified to having told Officer Nunez repeatedly he did not take the computer. The minor denied telling Nunez if she gave him a day, he would have the computer returned. Instead, what the minor said to Nunez was if she gave him an hour, he would ask the class troublemakers, especially M.R., about the theft of the computer. The minor denied having a backpack at the high school, and testified he had two lockers of his own.

2. *The Juvenile Court's Findings and Disposition*

After listening to counsels' arguments the juvenile court noted the case turned on witness credibility, and it had carefully considered all of the testimony before finding the People had proven their case beyond a reasonable doubt. The court sustained the allegation in the petition.

The disposition hearing immediately followed, during which the court declared the minor a ward of the court, and ordered him home on probation.

DISCUSSION

The minor's first contention is the trial court abused its discretion by allowing into evidence the testimony of defense investigator Lawrence Garrett that M.R. thought the minor stole the computer. The minor argues this was improper opinion evidence on the ultimate issue of his guilt. (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 81 [witness may not express opinion on defendant's guilt].) The Minor did not object on

that basis at the hearing, and he may not make that argument on appeal. (*People v. Seijas* (2005) 36 Cal.4th 291, 302; Evid. Code, § 353, subd. (a).) In any event, whether or not the testimony should have been excluded, its admission into evidence was harmless because the testimony was of no consequence.

Before Garrett testified, the juvenile court had already heard M.R. testify the minor had offered to pay him not to report the theft and to hide the computer in his locker. Officer Nunez also had testified earlier at the hearing to having heard M.R. say he had seen the minor steal the computer. Certainly, the court understood from this testimony that M.R. thought the minor had stolen the computer. Given the state of the evidence before Garrett testified, we find somewhat disingenuous the minor's claim Garrett's testimony was prejudicial.

The People contend the juvenile court failed to exercise its discretion under section 702 to determine whether the adjudicated offense was a felony or misdemeanor, requiring remand for such determination. We agree.

The crime of grand theft may be either a felony or a misdemeanor. (See Pen. Code, §§ 487, 489.) When, as here, a minor is found to have committed an offense that would in the case of an adult be punishable either as a felony or a misdemeanor, section 702 requires the juvenile court to declare the offense to be a misdemeanor or felony. The requirement "serves the purpose of ensuring that the juvenile court is aware of, and actually exercises, its discretion" under the statute. (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1207.) An express declaration is necessary; the juvenile court's failure to comply with this mandate requires a remand unless the record shows the juvenile court was aware of, and exercised, its discretion to determine the offense to be a felony or a misdemeanor. (*Id.* at p. 1209.)

In this case, the minute order of the disposition hearing reflects the crime of grand theft was a felony, as it was alleged in the petition. However, this factor alone does not satisfy the requirements of section 702. (*In re Manzy W., supra*, 14 Cal.4th at pp. 1207-1209.) Remand is required for the juvenile court to make an explicit finding whether the

crime of grand theft is a felony or misdemeanor. (See *In re Jorge Q.* (1997) 54 Cal.App.4th 223, 238 [remand for grand theft to be declared a felony or misdemeanor].)

DISPOSITION

The jurisdiction order is affirmed. The matter is remanded for a new disposition hearing at which the juvenile court will exercise its discretion to determine whether the grand theft offense is a felony or misdemeanor pursuant to section 702.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.